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10/563,895	03/15/2006	Bodo W. Lambertz	DD-XTS-25043	7202
2387	7590	08/07/2007	EXAMINER	
OLSON & HIERL, LTD. 20 NORTH WACKER DRIVE 36TH FLOOR CHICAGO, IL 60606			HOEY, ALISSA L	
			ART UNIT	PAPER NUMBER
			3765	
			MAIL DATE	DELIVERY MODE
			08/07/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/563,895

Applicant(s)

LAMBERTZ, BODO W.

Examiner

Alissa L. Hoey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Drawings***

2. The drawings are objected to because the lines are not uniformly thick and the identifier numerals are unclear. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the climate conduit leading into one of the pads of claims 12-15 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Claim Objections***

4. Claims 12-15 are objected to because of the following informalities: how does the climate conduit lead into one of the pads? Do you mean located next to one of the pads? Appropriate correction is required.

5. Claim 2 is objected to because of the following informalities: there is no antecedent basis for "the fabric". Appropriate correction is required.
6. Claim 2 is objected to because of the following informalities: it is unclear what is meant by "the fabric of which is dissimilar in structure". What is dissimilar in structure to what? Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3, 9 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Petrey (US 4,651,354).

In regard to claim 1, Petrey teaches a sock (10), in particular for the use with sports activities, that is padded in the treading area and comprises padding (30, 32, 34, 36) in the inner and outer areas of the balls of the foot, in the area of the heel, as well as in the outer instep, and that has intermediate spaces (see figures 1-3) between pads (30, 32, 34, 36).

In regard to claim 2, Petrey teaches a sock as in Claim 1, wherein there is a pad on the ball of the foot (32) in the area of the inner and outer ball, the fabric of which is dissimilar in structure (column 2, lines 61-68 through column 3, lines 1-2).

In regard to claim 3, Petrey teaches a sock as in Claim 2, wherein there the pad (32) on the ball of the foot is made up of multiple sections (see figures 2 and 3).

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In regard to claim 9, Petrey teaches a sock as in Claim 1 wherein the pads (2, 3, 4) have varying degrees of firmness.

In regard to claim 12, Petrey teaches a sock as in Claim 1 , wherein at least one side climate conduit (see non pad area) is provided that leads into at least one of the separate pads (30, 32, 34, 36) created by the intermediate spaces on the treading area (see figures 1-3).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 4-8, 10-11 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petrey.

Petrey teaches a sock with pads as described above in claims 1-3. However, Petrey fails to teach the toe pad having a sickle-shape. Petrey teaches the toe pads comprising a plurality of individual to pads so the overall shape is a broken sickle shape.

In regard to claims 4-6 it would have been obvious to have provided the toe pad to be in the shape of a sickle or individual toe pads, because as long as all the toe portions have pads under them for comfort and support purposes the pad can be a single sickle-shaped pad or it can be individual pads for each toe that form a broken sickle-shape and as supported in Applicant's specification in paragraphs 0014-0015.

In regard to claim 7, Petrey teaches a sock as in Claim 4, wherein the toe pads (30, 12) that are made up of multiple individual pads (figures 2 and 3).

In regard to claim 8, Petrey teaches a sock as in Claim 7, wherein the fabric of the individual pads (30, 12) is dissimilar in structure (see figures 1, 2, and 4).

In regard to claims 10 and 11, Petrey teaches a sock as in Claims 4 and 5, wherein the pads (20, 30, 12) have varying degrees of firmness due to their different thicknesses (see figure 4).

In regard to claim 13, Petrey teaches a sock as in Claim 4, wherein at least one side climate conduit (see area with no pads) is provided that leads into at least one of the separate pads (30, 32, 34, 36) created by the intermediate spaces on the treading area (figures 1-3).

In regard to claim 14, Petrey teaches a sock as in Claim 5, wherein at least one side climate conduit (see area with no pads) is provided that leads into at least one of the separate pads (30, 32, 34, 36) created by the intermediate spaces on the treading area (figures 1-3).

In regard to claim 15, Petrey teaches a sock as in Claim 10, wherein at least one side climate conduit (see area with no pads) is provided that leads into at least one of the separate pads (30, 32, 34, 36) created by the intermediate spaces on the treading area (figures 1-3).

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and can be found cited in PTO-892 form submitted herewith.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ALH

  
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